

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

DEPT. OF TRANSPORTATION  
DOCKETS

2008 NOV 14 P 2 43

**In the Matter of:**

**ANDREW C. DILLOW,  
Respondent.**

**Docket No. FMCSA-2008-0249<sup>1</sup>  
(Eastern Service Center)**

**ORDER APPOINTING ADMINISTRATIVE LAW JUDGE**

**1. Background**

On June 9, 2008, the Maryland Division Administrator, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim to Respondent, Andrew C. Dillow, proposing a civil penalty of \$550 for one alleged violation of the Federal Motor Carrier Safety Regulations (FMCSRs). Specifically, the Notice of Claim, which was based upon a June 5, 2008, compliance review (CR) of Premier Trucking, Ltd., charged Respondent with one violation of 49 CFR 395.8(e) for false reports of records of duty status (RODS).<sup>2</sup>

On June 17, 2008, Respondent replied to the Notice of Claim, denying the charge and providing his defense.<sup>3</sup> Respondent contended that the FMCSA employee who conducted the CR requested and checked RODS covering 169 days for Respondent but used only 30 of them to determine the alleged violation. By electronic mail dated August 6, 2008, Respondent requested a formal hearing.

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<sup>1</sup> The prior case number of this matter was MD-2008-0084-US1313.

<sup>2</sup> See Exhibit A to Field Administrator's Consent to Respondent's Request for Formal Hearing.

<sup>3</sup> See Exhibit B to Field Administrator's Consent to Respondent's Request for Formal Hearing.

On August 7, 2008, Claimant, the Field Administrator for FMCSA's Eastern Service Center, consented to Respondent's request for a formal hearing. Accordingly, this matter is being forwarded to the U.S. Department of Transportation's Office of Hearings.<sup>4</sup> It should be noted, however, that FMCSA provides:

Enforcement action will be primarily directed against motor carriers, even for driver violations, because the FMCSRs [Federal Motor Carrier Safety Regulations] hold motor carriers accountable for the actions of their drivers (49 CFR 390.11). Enforcement should only be taken against a driver when it can be conclusively demonstrated that the motor carrier could not have known of the violation. Enforcement action should be taken against drivers that consistently and knowingly ignore these regulations.<sup>5</sup>

## 2. Appointment of Administrative Law Judge

In accordance with 49 CFR 386.54, an administrative law judge is hereby appointed, to be designated by the Chief Administrative Law Judge of the Department of Transportation, to preside over this matter and render a decision on all issues, including the civil penalty, if any, to be imposed. The proceeding shall be governed by subparts D and E of 49 CFR Part 386 of the revised Rules of Practice and all orders issued by the administrative law judge.

*It Is So Ordered.*



Rose A. McMurray  
Assistant Administrator  
Federal Motor Carrier Safety Administration

11-7-08  
Date

<sup>4</sup> Respondent stated that it would be acceptable to have this case and Premier Trucking, Ltd., Docket No. FMCSA-2008-0244, heard together. That decision will be made by the Office of Hearings.

<sup>5</sup> See *In the Matter of Eric Corbett*, Docket No. FMCSA-2004-19876, Final Order, February 27, 2007, and Order on Reconsideration, August 22, 2007.

# CERTIFICATE OF SERVICE

This is to certify that on this 13 day of November, 2008, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Joseph A. Neenan.  
Representative for Respondent  
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One Copy  
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Andrew C. Dillow  
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Anthony G. Lardieri, Esq.  
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Robert W. Miller, Field Administrator  
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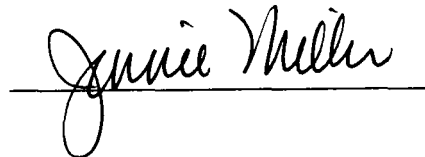
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The Honorable Ronnie A. Yoder  
Chief Administrative Law Judge  
Office of Hearings, M-20  
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A handwritten signature in cursive script, reading "Jennie Miller", is written over a horizontal line.